IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.9088 of 2005

1. Shri Tulshiram Anna Suryavanshi
and another ..Petitioners

vs.

1. Shri Sadashiv Shripati
Suryawanshi and others ..Respondents.

Shri P.D.Gharge for petitioners

CORAM: S.B.MHASE J.
10th February, 2006

P.C.

1. Heard the learned counsel for the petitioners.

2. This writ petition is directed against the order dated 13th September, 2005 rejecting the application filed below Exh.185 in Reg.Civil Suit No.1 of 1992 pending on the file of the Civil Judge, Jr.Dn., Vite in Sangli District. The said application for amendment was preferred on 22nd July 2005 when the suit for partition of the property has been filed in 1992. By the proposed amendment the petitioners/original plaintiffs desire to include the averments in respect of properties bearing Gat Nos. 870/1 and 892 since those properties have been sold by respondents on

5th July, 1989 and 15th December, 1993 to defendant Nos. 2, 3, 4 5 and 7, 8 and 9 respectively. Preamption in respect of these properties has been claimed and prayer in respect of prior claim to purchase or to preampt the property is tried to be included. Necessary valuation is tried to be amended and the prayers are proposed. Civil Judge, Jr.Dn. Vite vide the aforesaid order rejected the said application on the ground that the application has been filed after a period of 12 years from the date of sale of the property and no explanation has been given for belated amendment application. The suit is for partition and possession and if the amendments are allowed it will convert the suit into a suit for preamptive right and thus the nature of the suit will also be changed. On these two grounds the amendment is rejected.

3. Learned Counsel for the petitioners submitted that the amendment was of formal nature and averments in respect of these transactions are already reflected in the plaint. Assuming for a moment that there are some such averments made in respect of the transactions of 1989 still by such averment a relief of partition will be enforceable as

against the purchaser if the decree is passed in favour of the plaintiffs. However, there would not be enforcement of a right of preemption or prior claim to purchase the property. That is a distinct right in respect of the property. The other transaction dated 15th December, 1993 is pending the suit and, therefore, it will hit by the principles of lispendent and if the purchasers are already parties the decree for partition would be enforceable as against the purchasers of 1993 transaction also.

4. Surprisingly the application submitted under Order VI Rule 17 does not disclose the reasons as to why the plaintiffs have not preferred such amendment application since 1992 to 2005. In fact when the amendment application was submitted at belated stage it was obligatoray for the petitioners/original plaintiffs to explain the delay and latches on their part and to satisfy the court why the application for amendment could not have been made within time. I thus find that the two reasons assigned by the Trial Court namely delay and change in the nature of the suit are just and proper and that the partition suit will be converted into a suit for declaration

of right of preemption. Apart from that it requires to be mentioned that the Hindu Law does not recognise any right of preemption. Section 22 of the Hindu Succession Act, 1956 makes the provision in respect of preemptive right to the purchaser but, however, such purcher's right is available inter se between class I heirs after the death of main holder in the family. Here in the present matter the property belongs to defendant no.1 and he is alive. Succession is not opened. Nephew, is not class I heir. In the result section 22 of the Hindu Succession Act is not applicable to the present case. Apart from that the learned counsel tried to submit that in view of sec.31 of the Prevention of Fragmentation and Consolidation of Holding Act, 1947 the petitioners are entitled to purchase the property of the cosharer when the other part of the holding is of his father's brother. In fact section 31 provides that no holding or part of the holding shall be transferred unless permission from the Consolidation Officer is obtained. Thus, there is prohibition to transfer the property. The consequence of such transfer will be that the transaction is against law. In that eventuality the title of the vendor will not

be transferred in favour of vendee. However, that section does not create any right in favour of other cosharer or co-holder of the property to purchase the property. Such a right is not created by sectionm 31 of the said Act. Viewed from any angle the application was misconceived and it has been rightly rejected by the Trial Court. No interference is called for. Writ Petition is rejected summarily.

(S.B.MHASE J.)